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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/577,038

**Applicant(s)**

MASUYAMA ET AL.

**Examiner**

Ed Baird

**Art Unit**

3695

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) 11, 17, 19-24, 29-32, 43, 49, 51-56 and 61-64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-16, 18, 25-28, 33-42, 44-48, 50 and 57-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Applicant has elected Group I, claims 1-10, 12-16, 18, 25-28, 33-42, 44-48, 50, and 57-60, without traverse. Thus, claims 1-10, 12-16, 18, 25-28, 33-42, 44-48, 50, and 57-60 are presented here for examination.

### ***Restrictions***

1. Restriction is required under 35 U.S.C. §121 and § 372.
2. This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.
3. In accordance with 37 C.F.R. §1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.
  - I. Claims 1-10, 12-16, 18, 25-28, 33-42, 44-48, 50, and 57-60, drawn to a device for acquiring operating profit, classified in class 705, subclass 35 .
  - II. Claims 11, 17, 19, 43, 49, and 51, drawn to a devise for acquiring total assets, classified in class 705, subclass 35.
  - III. Claims 29-32, and 61-64, drawn to a devise for acquiring R&D cost of a specific enterprise from a management-finance database, classified in class 705, subclass 35.
  - IV. Claims 20-24 and 52-56, drawn to a program for management-finance information acquisition from a management-finance database for total factor productivity calculation, classified in class 705, subclass 30.
4. The groups of inventions listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

5. Inventions I - IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and they lack the same corresponding special technical feature. In the instant case:

- Invention I has separate utility such as a device for acquiring an operating profit.
- Invention II has separate utility such as a device for acquiring total assets.
- Invention III has separate utility such as a device for acquiring R&D cost of a specified enterprise from a management-finance database.
- Invention IV has separate utility such as a program for management-finance information acquisition from a management-finance database for total factor productivity calculation.

6. Applicant is advised that the reply to this requirement to be complete must include an election of an invention to be examined even though the requirement may be traversed (37 C.F.R. §1.143).

7. The election of an invention may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

8. During a telephone conversation with Kevin McDermott on 18 November 2008, a provisional election was made without traverse to prosecute the invention of Group I, claims 1-10, 12-16, 18, 25-28, 33-42, 44-48, 50, and 57-60. Affirmation of this election must be made by Applicant in replying to this Office action. Claims 11, 17, 19-24, 29-32, 43, 49, 51-56, and 61-64 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Specification***

9. Examiner objects to the Abstract of the Disclosure as being too long. The abstract contains 222 words.
10. Examiner objects to the Specification as not containing a summary.
11. Applicant is reminded of the proper language and format for the specification including the abstract of the disclosure.

Content of Specification

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).
- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.
- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
  - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."

- (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.
- (j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).

- (l) Sequence Listing. See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

***Claim Rejections - 35 USC § 112***

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 1-10, 12-16, 18, 25-28, 33-42, 44-48, 50, and 57-60 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Taken as a whole, the application recites an undue multiplicity of claims, and by virtue of the unreasonable number of claims presented, would tend to obfuscate, confuse, and becloud the claimed invention. In the Examiner's judgment, it is believed that twenty (20) claims are sufficient to properly define Applicant's invention, thus Applicant is required to select certain claims, not to exceed twenty, for examination on the merits, of which no more than six are independent claims, see M.P.E.P. 2173.05(n). Note that the Office has held that more than six independent claims (4.9% of cases filed) in an application is unreasonable. Further note that most patents (80%) have less than twenty claims, while patents in excess of 200 claims are less than 0.344 per cent of all cases filed, and are thus to be considered rare (see the *Federal Register*, October 5, 1998, Volume 63, Number 192, Page 53507, attached below). Note also the excess claim fees effective 12/08/04 as evidence of what is considered to be unreasonable.

To be complete the non-selected claims must be cancelled or Applicant must present appropriate arguments as to why the above rejection is in error.

14. Regarding **claim 1**, the limitation:

- earnings on intellectual asset calculation means for **calculating earnings** on intellectual asset by subtracting a value obtained by multiplying the return on financial assets to the financial assets and a value obtained by multiplying the return on tangible assets to the tangible fixed assets from the sum of the acquired gross operating profit and patent and other royalty income;

is unclear. The terms "multiplying the return on financial assets to the financial assets" and "multiplying the return on tangible assets to the tangible fixed assets" appear to be grammatically incorrect wherein one should be multiplied "by" (emphasis added) another not "to" another. .

For purposes of examination, the limitation will be interpreted to read as:

- earnings on intellectual asset calculation means for calculating earnings on intellectual asset by subtracting a value obtained by multiplying the return on financial assets ~~to~~ by the financial assets and a value obtained by multiplying the return on tangible assets ~~to~~ by the tangible fixed assets from the sum of the acquired gross operating profit and patent and other royalty income;

Appropriate correction is required.

15. Regarding **claims 2-10, 12-16, 18, 25-28, 33-42, 44-48, 50, and 57-60**, limitations regarding the calculations of earnings, returns, excess earnings, expected intellectual property profit and the like are also unclear as exemplified in the rejection of claims 1, above. This list of calculations is not meant to be exhaustive but to be representative of errors in the claim language riddled throughout.



For purposes of examination, the limitations will be interpreted as exemplified in the rejection of claim 1 above. Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

16. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

17. Claims 1-10, 12-16, 18, 25-28, 33-42, 44-48, 50, and 57-60 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

18. **Claims 1-10, 12-16, 18, 25-28, 33-42, 44-48, 50, and 57-60** are rejected under 35 U.S.C. 101 because these claims lack a tangible result. The device/ apparatus merely acquires data, performs a calculation, and outputs data.

19. **Claims 1-10, 12-16, 18, and 25-28** are rejected under 35 U.S.C. 101 because these claims are to "a device" which, based on a review of the specifications, not clearly hardware. If the claim is something other than hardware, the claim is to "functional descriptive material".

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data.

Both types of "descriptive material" are nonstatutory when claimed as descriptive material per se, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)(discussing patentable weight of data structure limitations in the context of a statutory claim to a data structure stored on a computer readable medium that increases computer efficiency) and *In re Warmerdam*, 33 F.3d 1354, 31 USPQ2d 1754, 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diamond v. Diehr*, 450 U.S. 175, 185-86, 209 USPQ 1, 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer"). (See MPEP 2106.01 [R-6] Computer-Related Nonstatutory Subject Matter).

20. **Claims 33-42, 44-48, 50, and 57-60** are rejected under 35 U.S.C. 101 because these claims are to "a program" which is "functional descriptive material" as discussed above.

***Claim Rejections - 35 USC § 103***

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

22. Claims 1 – 10 and 33 – 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Quackenbush et al** (USPub. No. 2003/0172014) in view of **Wilkinson et al** (USPub. No. 2002/0099637) in further view of **Downes et al** ("Dictionary of Financial and Investment Terms, Fifth Edition", 1998, Barron's Education Series, Inc.).

23. Regarding **claim 1**, **Quackenbush** teaches:

- means for acquiring a gross operating profit, patent and other royalty income, financial assets, return on financial assets, tangible fixed assets and return on tangible fixed assets of a specified enterprise from a management-finance database containing management-finance information of enterprises [see at least 0008, 0016 - Examiner notes that since "a user may change the value of the inputs and assumptions as desired", it follows that one knowledgeable in the art at the time of the invention would include different types of income and assets as inputs into **Quackenbush's** system];
- calculating earnings on intellectual asset by subtracting a value obtained by multiplying the return on financial assets **by** the financial assets and a value obtained by multiplying the return on tangible assets **by** the tangible fixed assets from the sum of the acquired gross operating profit and patent and other royalty income [see at least 0015, 0017, 0018, 0052, 0074 – Examiner interprets *projected earnings* and *providing financial performance information* as including Applicant's **calculating earnings**];

Examiner notes that return is defined as profit on a securities or capital investment usually expressed as an annual percentage rate [Downes page 513 - 514]. Thus, earnings (i.e. profits) in the instant invention are derived based on the definition of returns.

- output means for outputting the calculated earnings on intellectual asset to display means, printing means, recording medium, or another telecommunications device via a communication line [see at least 0018 and 0104].

**Quackenbush** does not explicitly disclose financial data, such as earnings and profit, as applied to intellectual assets. However, **Wilkinson** teaches a process for investing in intellectual property comprises providing an accounting for an intellectual property investment; providing a valuation corresponding to the intellectual property investment; performing financial analysis related to the intellectual property investment; and managing the investment based upon the accounting, valuation, and analysis for that investment [0010]. **Wilkinson** further teaches calculating the total net intellectual property asset value [see at least 0011, 0014 and claim 34].

Therefore it would have been obvious to one having ordinary skill in the art at the time of the instant invention to modify the method of **Quackenbush** to include *intellectual property valuation* as taught by **Wilkinson** because an investment recommendation may be made based upon financial analysis and valuation (of an intellectual asset) [**Wilkinson** 0015].

24. **Claims 4 – 5** are substantially similar to claim 1 and are thus rejected for the same reasons. Examiner notes that data acquired which includes different types of earnings and different types of expenses and costs reflect intended use of the invention. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. (see MPEP 2106).

25. **Claims 6 – 10** are substantially similar to claim 1 with the addition of the calculation for return on intellectual asset. Examiner notes that this calculation is the same as that defined by **Downes** in the rejection of claim 1 above.

26. **Claims 33-37** are “programs” which are substantially parallel to the “devices” of claims 1 – 10 with the addition of information processing means. **Quackenbush** discloses such [see at least 0031].

27. Claims 12 – 16, 18, 38 – 42, 44 – 48, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Quackenbush** in view of **Wilkinson** in further view of **Downes** in further view of **Ellerman** (“Linking intangibles in executive pay”, Bill Montgomery, Ben Stradley, Workspan. Scottsdale: May 2002. Vol. 45, Iss. 5; pg. 8, 2 pgs).

28. **Claims 12 – 16 and 18** are substantially similar to claims 1 - 10 with the addition of the calculation of excess earnings. Neither **Quackenbush**, **Wilkinson**, nor **Downes** explicitly discloses calculating excess earnings on intellectual assets.

However, **Ellerman** teaches of excess earnings or “Intangibles Performance” [Abstract].

Therefore it would have been obvious to one having ordinary skill in the art at the time of the instant invention to modify the method of **Quackenbush** to include “*Intangibles Performance*” as taught by **Ellerman** because this measure can be capitalized to estimate the value of intangible assets and, when added to book value, can estimate a company's Comprehensive Value [Ellerman Abstract].

29. **Claims 38 - 42** are “programs” which are substantially parallel to the “devices” of claims 12-16 and 18 and are thus rejected for the same reasons.

30. **Claims 44 - 48** are substantially similar to claims 38-42 with the addition of information processing means. **Quackenbush** discloses such [see at least 0031].

31. **Claim 50** is substantially similar to claims 44 – 48 and is thus rejected for the same reasons.

32. Claims 25 – 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Quackenbush** in view of **Wilkinson** in further view of **Downes** in further view of **The Motley Fool** (Austin American Statesman. Austin, Tex.: Jun 21, 1998. pg. J.3).

33. **Claims 25 – 28** are substantially similar to claims 1 - 10 with the addition of the calculation expected intellectual property profit. Neither **Quackenbush**, **Wilkinson**, nor **Downes** explicitly discloses calculating expected intellectual property profit.

However, **Motley Fool** teaches accounting for expected earnings growth related to intellectual property" [page 1, last paragraph – page 2, 2<sup>nd</sup> paragraph].

Therefore it would have been obvious to one having ordinary skill in the art at the time of the instant invention to modify the method of **Quackenbush** to include *expected earnings related to intellectual property* as taught by **Motley Fool** because, over the years, such assets are rarely worthless, can even appreciate in value, and may be worth a much more than its book value [**Motley Fool** page 2, 2<sup>nd</sup> paragraph].

34. Claims 57 - 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Quackenbush** in view of **Wilkinson** in further view of **Downes** in further view of **Ellerman** in further view of **The Motley Fool**.

35. **Claims 57 – 60** are substantially similar to claims 44 - 48 with the addition of the calculation expected intellectual property profit. **Motley Fool** teaches accounting for expected earnings growth related to intellectual property" [page 1, last paragraph – page 2, 2<sup>nd</sup> paragraph]. Thus, these claims are rejected for the same reasons as claims 25 – 28.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ed Baird whose telephone number is (571)270-3330. The examiner can normally be reached on Monday - Thursday 7:30 am - 5:00 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James A. Kramer/  
Supervisory Patent Examiner, Art Unit 3693

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